

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF UNIT CLARIFICATION NO. 6-86:

MONTANA EDUCATION ASSOCIATION,)
NATIONAL EDUCATION ASSOCIATION,)

Petitioner,)

- vs -)

COLSTRIP ELEMENTARY DISTRICT)
NO. 19 and HIGH SCHOOL DISTRICT)
NO. 19,)

Respondent.)

NOTICE OF
ORAL ARGUMENT

* * * * *

TO: Bruce W. Moerer
Montana School Boards Association
One South Montana Avenue
Helena, Montana 59601

Emilie Loring
HILLEY & LORING, P.C.
121 4th Street North - Suite 2G
Great Falls, Montana 59401

* * * * *

Please take notice that the above-mentioned parties shall have the opportunity to present briefs and oral arguments in regard to the exceptions filed to the Findings of Fact, Conclusions of Law and Recommended Order of Hearing Examiner Stan Gerke dated November 12, 1987.

Oral arguments will be heard on Friday, June 24, 1988, at 9:30 a.m. in the first floor conference room #104 of the Department of Labor and Industry Building, 1327 Lockey Street, Helena, Montana. New or additional evidence may not be presented at this time. To be considered, briefs must be received (original and 5 copies) in this office no later than Tuesday, June 14, 1988.

Each party is asked to limit their arguments to thirty (30) minutes.

DATED this 1 day of June, 1988.

BOARD OF PERSONNEL APPEALS

By Robert R. Jensen
Robert R. Jensen
Administrator

STATE OF MONTANA
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IN THE MATTER OF UNIT CLARIFICATION NO. 6-86

MONTANA EDUCATION ASSOCIATION,)
NATIONAL EDUCATION)
ASSOCIATION,)

Petitioner,)

-vs-

COLSTRIP ELEMENTARY DISTRICT)
NO. 19 and HIGH SCHOOL)
DISTRICT NO. 19.)

Respondent.)

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND
RECOMMENDED ORDER

* * * * *

Petitioner, Montana Education Association, National Education Association filed a petition for Unit Clarification with this Board on September 4, 1986. The Petitioner requests the Board to clarify the bargaining unit to retain the position of Director of Swimming Pool Programs.

The Respondent, Colstrip Elementary District No. 19 and High School District No. 19, contends the position of Director of Swimming Pool Programs should not be included in the bargaining unit.

A formal hearing was conducted in the above-captioned matter on May 19, 1987, before Stan Gerke, Hearing Examiner. The Hearing was held under the authority of Section 39-31-207, MCA and in accordance with the Administrative Procedures Act, Title 2, Chapter 4, MCA. The Petitioner was represented by Emilie Loring, Attorney at Law, Great Falls, Montana. The Respondent was represented by Rick D'Hooge, Montana School Boards Association, Helena, Montana. Post-hearing briefs were submitted by the parties and all were received by July 27, 1987.

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ISSUE

Whether or not the position of Director of Swimming Pool Programs is included in the existing bargaining unit consisting of all teachers of the School District who are certified in Class 1, 2, 4, 5, or 6 as provided in Section 20-4-106, MCA, and whose positions call for or require such certification, Speech Therapists, and Home School Co-ordinators, but shall exclude the following: supervisors as defined by the Act, substitute teachers, those teachers whose employment is of a casual or seasonal character and all other employees. The employment of a teacher for less than fifteen (15) hours per week, or substitute teachers shall be deemed to be employment of a temporary, casual, or seasonal character and such employees shall not be considered members of the appropriate unit. (The preceding description of the existing bargaining unit will hereinafter be referred to as the "existing bargaining unit").

FINDINGS OF FACT

1. The primary duties of the Director of Swimming Pool Programs (hereinafter the "Pool Director") are instructing the students to be safe swimmers or coordinating such instruction; performing swimming pool maintenance, or arranging for the performance of pool maintenance; and, scheduling swimming pool usage.

2. The position of Pool Director was created in the Spring of 1984 and has been occupied with the same individual to the present time. The position, from it's creation, has been included in the existing bargaining unit until school year 1986-87. In July, 1986, the Respondent unilaterally removed the position from the existing bargaining by its action of implementing an "administrators contract" with the incumbent of the position.

1 3. The requirements of the position of Pool Director
2 do meet the description of the existing bargaining unit.

3 4. The duties and responsibilities of the position of
4 Pool Director have not changed from its creation to the
5 present time.

6 5. All proposed findings of fact were considered and
7 those not specifically addressed were found to be irrelevant
8 to this matter.

9 CONCLUSIONS OF LAW

10 The Respondent unilaterally modified the existing
11 bargaining unit by removing the position of Pool Director.
12 The purpose of Petitioner's filing of Unit Clarification was
13 to restore the existing bargaining unit to its original
14 state.

15 This Board allows unit clarification petitions under
16 ARM 24.26.630 and: "(1) when the duties and responsibilities
17 of a position have changed since the original unit determi-
18 nation, as to create some doubt about the continuous appro-
19 priateness of those positions included; (2) if the employees
20 petition that they were originally inappropriately included;
21 (3) changes in political subdivision organization; or (4)
22 changes in union structure." (UM No. 2-75). In instant
23 matter, there have been no changes of duties or responsibil-
24 ities of the position in question; the "employees" have
25 petitioned to retain the original complexion of the bargain-
26 ing unit; no changes in political subdivision organization
27 have occurred; and, there have been no changes in union
28 structure.

29 The inclusion of individuals is clear in the bargaining
30 unit description contained in the current collective bar-
31 gaining agreement. The status of the Pool Director position
32 has not changed. To permit one of the contracting parties

1 to effect a change in the definition of the existing bar-
2 gaining unit by means of a unit clarification procedure
3 would be disruptive of an establishing bargaining relation-
4 ship. (UC No. 1-81).

5 The position of Pool Director is included in the
6 existing bargaining unit.

7 RECOMMENDED ORDER

8 The Parties, Montana Education Association, National
9 Education Association and Colstrip Elementary District No.
10 19 and High School District No. 19 shall immediately rein-
11 state the position of Director of Swimming Pool Programs to
12 the existing bargaining unit as defined above.

13 Dated this 12 day of November, 1987.

14
15 BOARD OF PERSONNEL APPEALS

16
17 By: Stan Gerke
18 Stan Gerke
Hearing Examiner

19 SPECIAL NOTE

20 In accordance with Board's Rule ARM 24.25.107(2), the
21 above RECOMMENDED ORDER shall become the FINAL ORDER of this
22 Board unless written exceptions are filed within 20 days
23 after service of these FINDINGS OF FACT, CONCLUSIONS OF LAW,
24 AND RECOMMENDED ORDER upon the parties.

CERTIFICATE OF MAILING

I, Tara Shepherd, do hereby certify
that a true and correct copy of this document was mailed to
the following on the 12th day of November, 1987:

Al Bellister, UniServ Director
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Emilie Loring
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Robert Olmstead, Chairperson
Colstrip Elementary District No. 19
and High School District No. 19
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